



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JAN 28 2009

Lawrence M. Noble, Esquire  
Kedric L. Payne, Esquire  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005

RE: MUR 6035  
Northern Trust Company

Dear Mr. Noble and Mr. Payne:

On July 16, 2008, the Federal Election Commission notified your client, Northern Trust Company of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On January 22, 2009, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe your client violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kathryn Lefebvre, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Lebeaux".

Susan L. Lebeaux  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS: Northern Trust Company**

**MUR 6035**

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**I. GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission by Thomas Fitton, on behalf of Judicial Watch, Inc. *See* 2 U.S.C. § 437g(a)(1).

**II. FACTUAL SUMMARY**

The complaint alleges, based on an article in *The Washington Post*, that then-Senator Barack Obama and his wife Michelle Obama obtained a mortgage from Northern Trust Company ("Northern Trust") at a discounted interest rate, which resulted in a "disguised campaign contribution to [then-]Senator Obama of at least \$108,000." The complaint further alleges that the contribution was a prohibited corporate contribution and that neither of then-Senator Obama's campaigns nor Northern Trust reported the contribution. On July 2, 2008, *The Washington Post* published an article stating that then-Senator Barack Obama and Michelle Obama obtained a mortgage from Northern Trust on June 15, 2005, for \$1.32 million at a 5.67 percent interest rate, for the purchase of a \$1.65 million home on Chicago's south side. Joe Stephens, *Obama Got Discount on Home Loan*, Wash. Post, July 2, 2008, at A03 ("Stephens article"). According to the article, the Obamas received a mortgage from Northern Trust at a discounted rate, lower than "the average offered at the time in Chicago for similarly structured jumbo loans." *Id.* Rates for similar loans during the same week averaged 5.93 percent to 6.0 percent,

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1 according to the story, and may have saved the then-Senator more than \$300 a month. *Id.*  
2 A spokesman for then-Senator Obama, quoted in the article, said that the interest rate was  
3 adjusted to account for a competing offer from another lender and other factors. *Id.* The  
4 article quoted the Obama spokesman as saying “[t]he Obamas have since had as much as  
5 \$3 million invested through Northern Trust.” *Id.* The article noted that when the  
6 Obamas secured the loan, their income had risen dramatically, because Barack Obama  
7 assumed his Senate seat and received a \$2.27 million book deal from Random House, and  
8 Michelle Obama received a promotion to vice president at the University of Chicago  
9 Hospitals. *Id.* It stated, however, that the Obamas had no prior relationship with  
10 Northern Trust when they applied for the loan. *Id.* The article also quoted a Northern  
11 Trust official as stating that Northern Trust has no formal program to provide discounts to  
12 public officials, but that a person’s salary and occupation are two factors they take into  
13 consideration when anyone is seeking a mortgage at Northern Trust. *Id.* The official  
14 further stated that “[t]he bottom line is, this was a business proposition for us” and “our  
15 business model is to service and pursue successful individuals, families and institutions.”  
16 *Id.*<sup>1</sup>

17 Based on the Stephens article, Judicial Watch filed a complaint with the  
18 Commission. The complaint states that the Stephens article reports that “the favorable  
19 interest rate would save [then-]Sen. Obama over \$300 a month, which over the life of the

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<sup>1</sup> The Stephens article was criticized by a later article in *The Washington Post* which stated that the Stephens article “had a negative cast to it and lacked the important context that other wealthy and savvy borrowers could have done as well under similar circumstances.” Deborah Howell, *More Story Than a Loan Merited*, *Wash. Post*, July 13, 2008 at B06. The Stephens article was also criticized by an article in the *Columbia Journalism Review*, which questioned why *The Washington Post* ran the Stephens article because Stephens left the question of whether Obama’s political position affected the details of his loan unanswered and “all that’s left are a bunch of weak correlations.” Justin Peters, *Behind Barack’s “Suspicious” Mortgage*, *Colum. Journalism Rev.*, July 2, 2008.

1 30-year loan, would be at least \$108,000.” In further quoting the article, the complaint  
2 states that “[t]he Obamas had no prior relationship with Northern Trust when they  
3 applied for the loan. They received an oral commitment on Feb. 4, 2005, and locked in  
4 the rate of 5.625 percent, the campaign said. On that date, HSH [HSH Associates,  
5 Financial Publishers] data show, the average rate in Chicago for a 30-year fixed-rate  
6 jumbo loan with no points was about 5.94 percent.” *Id.*

7 The complaint asserts that the Stephens article suggests that then-Senator Obama  
8 received special treatment because he was a U.S. Senator, based on a quote in the article  
9 from Northern Trust Vice President John O’Connell reportedly stating that among the  
10 factors he would expect Northern Trust would consider in setting a mortgage rate is “a  
11 person’s occupation.” *Id.* at 2-3. The complaint further quotes the Stephens article as  
12 reportedly stating that since 1990, Northern Trust employees contributed \$71,000 to then-  
13 Senator Obama’s political campaigns, including a \$1,250 contribution to Senator  
14 Obama’s 2004 campaign for U.S. Senate. *Id.* at 3.

15 The complaint then alleges that, based on the information in the Stephens article,  
16 Northern Trust’s discounted mortgage is actually a disguised campaign contribution to  
17 then-Senator Obama because at the time he secured his mortgage, it appears that he was  
18 raising funds for his 2004 and 2010 Senate campaigns. *Id.* It further alleges the  
19 \$108,000 contribution by Northern Trust, a \$300 a month “savings” over the life of the  
20 Obamas’ 30-year mortgage loan based on the discounted rate, would violate federal laws  
21 because it is a corporate contribution and should have been disclosed. *Id.*

22 The response from Northern Trust states that there was no connection between the  
23 mortgage and an election, and that even if there were a connection, the mortgage was not

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1 a contribution from Northern Trust. Northern Trust is a "financial services institution  
2 that focuses on, among other things, integrated personal wealth management solutions for  
3 successful individuals, families, foundations, etc., and looks to establish long-term  
4 financial relationships with these clients." Mortgage loans are "commonly provided as a  
5 service to our existing customers and as a way to introduce new and potential clients to  
6 the institution and familiarize them with the other services that the institution can  
7 provide." During discussions about the mortgage, Northern Trust discussed the  
8 possibility of providing investment services to then-Senator and Ms. Obama. In light of  
9 the investment business Northern Trust anticipated receiving from then-Senator and Ma.  
10 Obama, Northern Trust approved a discount from the rate on Northern Trust's internal  
11 rate sheet. Northern Trust provides discounts off its internal rate sheet in the ordinary  
12 course of its business. Then-Senator and Ms. Obama entered into a mortgage loan  
13 agreement and also opened a brokerage account at Northern Trust's brokerage affiliate,  
14 Northern Trust Securities, Inc.

15 According to the response, Northern Trust searched its records to locate all of the  
16 \$1 million or more loans that had a 30-year term and a fixed interest rate, which were  
17 closed and funded during the period from January 1, 2005 to August 1, 2005. Fourteen  
18 mortgage loans fit that criteria, and "of these 14, eight [including the Obamas' loan] were  
19 locked in at a 'discount' in the form of a reduction in the interest rate indicated on  
20 Northern Trust's internally produced 'rate sheet.' This rate sheet, which is published  
21 internally at Northern Trust at least daily, is the starting point used by Northern Trust  
22 staff for determining the interest rate for a mortgage."

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2 **III. LEGAL ANALYSIS**

3       The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits  
4 corporations from making a contribution or expenditure in connection with any election  
5 to any political office. 2 U.S.C. § 441b(a). Candidates and political committees are also  
6 prohibited from knowingly accepting contributions from corporations. *Id.* The Obamas'  
7 loan from Northern Trust Company was procured for the purchase of the Obamas' new  
8 home in Chicago, as evidenced by the mortgage and closing documents attached to the  
9 complaint. There is no factual information from the complaint, the responses, or the  
10 Stephens article, that funds from the mortgage were used "in connection with any  
11 election to any political office," a nexus required for a corporate contribution or  
12 expenditure to be prohibited under the Act. 2 U.S.C. § 441b(a). This analysis is  
13 consistent with MUR 4944 (Hillary Clinton), where the Commission found no reason to  
14 believe that Senator Hillary Rodham Clinton, her Senate campaign committee, and  
15 Washington Mutual Home Loans, Inc. violated 2 U.S.C. § 441b(a) in relation to a  
16 mortgage Hillary Rodham Clinton and former President Bill Clinton obtained for their  
17 home in Chappaqua, New York.<sup>2</sup>

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<sup>2</sup> The MUR 4944 Statement of Reasons of Commissioners McDonald, Mason, Sandstrom, Smith and Thomas states "[i]t is undisputed that the money that PNC lent to the Clintons was used solely for the purchase of their new home. There is no indication that this loan 'freed up' funds then used by Mrs. Clinton for campaign expenses." The SOR further draws an analogy between the mortgage and the Commission's personal use regulations, which classify mortgage payments as personal use, and notes that payments made to a candidate, irrespective of the candidacy, are not treated as a contribution. 11 C.F.R. § 113(g) (1) and (6). Further, it states that treating bank loans "for a candidate's home purchase or other personal living expenses as not 'in connection with the campaign' and as made 'irrespective of the candidacy' is well founded, in our view."

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1           In addition, the loan is not considered a prohibited corporate contribution. The  
2 Act states that the term "contribution" includes "any...loan...made by any person for the  
3 purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(A)(i). An  
4 exception to this definition is a loan of money by a bank that is made in accordance with  
5 applicable law and in the ordinary course of business. 2 U.S.C. § 431(8)(B)(vii). A loan  
6 is considered in the ordinary course of business if it (1) bears the usual and customary  
7 interest rate of the lending institution for the category of loan involved; (2) is made on a  
8 basis that assures repayment; (3) is evidenced by a written instrument; and (4) is subject  
9 to a due date or amortization schedule. 11 C.F.R. § 100.82(a)(1)-(4). The Commission's  
10 regulations define "made on a basis that assures repayment" as, *inter alia*, when the  
11 lending institution making the loan has perfected a security interest in collateral owned  
12 by the candidate, the fair market value of the collateral is equal to or greater than the loan  
13 amount and the candidate provides documentation of the perfected security interest.  
14 11 C.F.R. § 100.82(e)(1)(ii).

15           Information provided in Northern Trust's response and the complaint shows the  
16 loan was made in accordance with applicable law and in the ordinary course of business.  
17 2 U.S.C. § 431(8)(A)(i). Northern Trust's response and the loan documentation  
18 adequately address each of the four criteria for a loan to be made in the ordinary course  
19 of business, set forth in 11 C.F.R. § 100.82(a). First, the Obamas' loan bears the usual  
20 and customary interest rate of Northern Trust because the Obamas were afforded a  
21 discount comparable to discounts given to other similarly situated borrowers. Eight of  
22 the 14 mortgage loans comparable to the Obamas' loan at Northern Trust received  
23 discounts. The Obamas' loan was one of a majority of the comparable mortgages that

1 received a discount, and it was within the range of the other mortgage discounts. See  
2 MUR 5198 (Cantwell) (interest rate for loan was usual and customary because 36 of 38  
3 comparable lines of credit in a two-year period were at or below the rate offered to  
4 candidate) and MUR 5421 (Kerry) (interest rate was usual and customary because 48 of  
5 52 comparable loans granted during a five-month period had the same interest rate as  
6 offered to candidate).

7 Further, Northern Trust uses mortgage loans as a way to introduce new and  
8 potential clients to the institution and familiarize them with the other services that the  
9 institution provides. The Obamas were offered a discounted rate because Northern Trust  
10 anticipated receiving investment business from the Obamas.

11 Second, the Obamas' mortgage was made on a basis that assures repayment  
12 because Northern Trust had a perfected security interest in the Obamas' \$1.65 million  
13 home as collateral for the \$1.32 million loan, according to the mortgage documents and  
14 response from Northern Trust. Finally, the Obamas' mortgage was evidenced by written  
15 instruments, the mortgage documents, and is subject to a due date of July 1, 2035, which  
16 fulfills the third and fourth requirements of 11 C.F.R. § 100.82(a). Thus, the mortgage  
17 loan is not a prohibited corporate contribution because it falls under the exception for  
18 loans made in accordance with applicable law and in the ordinary course of business. For  
19 all of these reasons, the Commission finds no reason to believe that Northern Trust  
20 violated 2 U.S.C. § 441b(a).

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